



HOLDING REDLICH

Minister for Planning and Infrastructure

ABN 38 755 709 681

and

Winten (14) Pty Limited

ACN 092 479 626

Winten Developments Pty Limited

ACN 003 513 219

Woorong Park Pty Limited

ACN 094 493 428

Planning Agreement

Environmental Planning and Assessment Act 1979

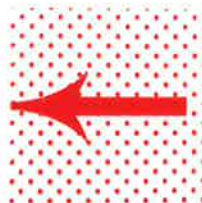


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THIS deed is dated

30 September

2013

PARTIES:

MINISTER FOR PLANNING AND INFRASTRUCTURE (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

WINTEN (14) PTY LIMITED (ACN 092 479 626) as trustee of the Winten (14) Trust (ABN 17 092 479 626) of Level 10, 61 Lavender Street, Milsons Point, New South Wales (**Developer**)

WINTEN DEVELOPMENTS PTY LIMITED (ACN 003 513 219) as trustee of the St Leonards Unit Trust (ABN 62 936 379 867) of Level 10, 61 Lavender Street, Milsons Point, New South Wales (**Guarantor**)

WOORONG PARK PTY LTD (ACN 094 493 428) as trustee of the Woorong Park Trust (ABN 58 006 628 844) of Level 10, 61 Lavender Street, Milsons Point, New South Wales (**Landowner**)

INTRODUCTION:

- A** The Landowner owns the Land.
- B** The Developer intends to develop the Land.
- C** The Minister and the Landowner entered into the Initial Planning Agreement.
- D** Under the Initial Planning Agreement, the Landowner:
 - (i) sought a change to the SEPP in the form of a Draft SEPP to facilitate the accelerated rezoning of the Marsden Park Precinct; and
 - (ii) agreed to provide certain contributions to meet the needs created by the future development of the Marsden Park Precinct.
 - (iii) agreed to obtain the Minister's approval of the Services Infrastructure Strategy and the Servicing Infrastructure Implementation Plan prior to the public exhibition of the Draft SEPP.
- E** The Landowner proposed to make an offer to enter into a further planning agreement with the Minister to provide further contributions to meet the needs created by the future development of the Marsden Park Precinct prior to the exhibition of the Draft SEPP.
- F** The Landowner and Developer have offered to enter into this deed with the Minister to provide and secure the further contributions to meet the needs created by the future development of the Marsden Park Precinct.

- G** The Guarantor has agreed to guarantee the performance of the Developer and to indemnify the Minister for any costs and expenses incurred by the Minister in rectifying any default of the Developer under this deed.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.2 Definitions

In this **deed**, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Actual Cost, in relation to the Road Improvement Works, means:

- (a) the final certified contract cost inclusive of variations at completion of the Construction Contract;
- (b) in relation to the land upon which the Road Improvement Works are to be constructed:
 - (i) any land acquisition costs borne by the Developer; and
 - (ii) remediation of the land including, but not limited to, remediation of any contamination, asbestos and/or lead,
- (c) utility service adjustments (including relocation of pylons); and
- (d) other costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) incurred and paid by the Developer to third parties for the following:
 - (i) design of the Road Improvement Works, project management, fees, investigations, consultant fees, studies or reports specifically required for the Road Improvement Works; and
 - (ii) any licence, approval, authority, permit or permission specifically required to be obtained for or in relation to the carrying out of the Road Improvement Works.

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them)

which may be required by law, an Authority, Sydney Water or RMS for carrying out of the works the subject of this deed or the Development.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

(a) by an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2013.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Commercial Premises has the same meaning as commercial premises under the Standard Instrument.

Construction Certificate has the same meaning as in the Act.

Construction Contract means a contract between the Developer and a third party, for the carrying out of the Road Improvement Works by that third party.

Contributions mean the aggregate of the:

(a) Education Land Contribution;

(b) Road Improvement Works Contribution; and

(c) Sydney Water Infrastructure Contribution.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion.

CPI Adjustment Date means 1 July 2013 and each anniversary of 1 July 2013 thereafter.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

Determination means the *Environmental Planning and Assessment (Special Infrastructure Contribution - Western Sydney Growth Areas) Determination 2011* as amended as at the date of this deed.

Development means the development of the Land for approximately 3,600 Urban Lots.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the Contributions to be provided by the Developer in accordance with Schedule 4.

Director-General means the Director-General of the Department of Planning and Infrastructure from time to time.

Draft SEPP means any draft environmental planning instrument proposed to amend the SEPP that will allow the Development to proceed.

Education Cash Contribution means a monetary contribution in the amount of \$6,000,000 to fund the acquisition of approximately 3 hectares of the Land for a school site to service the Marsden Park Precinct approximately identified on the plan attached to this deed as Annexure B and referred to as the 'Eastern Primary School Site'.

Education Land means the site comprising approximately 8 hectares of the Land identified on the plan attached to this deed as Annexure B and referred to as the 'K-12 School Site' or as otherwise agreed in writing between the Developer and the Minister.

Education Land Contribution means both the:

- (a) dedication of the Education Land; and
- (b) payment of the Education Cash Contribution.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

Growth Centre has the same meaning as in the SEPP.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee and Indemnity means the guarantee of the Developer's performance of its obligations under this deed and indemnity in favour of the Minister as set out in Schedule 5.

Initial Planning Agreement means the agreement entered into between the Minister and Winten No. 25 Pty Ltd and Woorong Park Pty Ltd dated 30 July 2011.

Land means the land described in Schedule 3 of this deed.

Marsden Park Precinct means the "Marsden Park Precinct" which is shown on the North West Growth Centre Precinct Boundary Map.

North West Growth Centre Precinct Boundary Map has the same meaning as defined in the SEPP.

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the subdivision of the Land.

Plan of Subdivision means a registered plan of subdivision under Division 3 of Part 23 of the *Conveyancing Act 1919* (NSW).

Practical Completion means either:

- (a) where the expression is defined in a Road Works Agreement or Sydney Water Developer Works Deed, the definition of "Practical Completion" in those agreements;
- (b) where the expression is not defined in a Road Works Agreement, that stage in the execution of the Road Improvement Works under the relevant Road Works Agreement where:
 - (i) the Road Improvement Works (including any associated works necessary for public access) have been completed for their intended public use, except for minor defects and minor omissions which:
 - (A) do not impede use of the Road Improvement Works by the public for the continuous safe passage of vehicular traffics and pedestrians;
 - (B) will not impede or obstruct the convenient and safe use of the Road Improvement Works during rectification of the defects; and
 - (C) RMS's authorised representative determine that the Developer has reasonable grounds for not rectifying prior to public use;

- (ii) all relevant laws in respect of the Road Improvement Works have been satisfied;
 - (iii) all documents, certifications and information required under the Road Works Agreement which, in the opinion of the RMS, are essential for the use, operation and maintenance of the Road Improvement Works have been supplied including all Approvals required to be obtained from the relevant Authorities and all other information requested by the RMS; and
 - (iv) with the approval of the RMS, the Developer has commissioned into operation the Road Improvement Works, including all plant incorporated in the Road Improvement Works and any traffic signalling equipment and the Developer has demonstrated to the RMS that the commissioning has been successful.
- (c) where the expression is not defined in a Sydney Water Developer Works Deed in relation to the Sydney Water Infrastructure Works, the issue of a section 73 compliance certificate under section 73 of the *Sydney Water Act 1994* (NSW) in relation to those works.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Residential Accommodation has the same meaning as residential accommodation under the Standard Instrument.

Road Improvement Works means the Richmond Road upgrade works comprising the Stage 3 Road Works and Stage 4 Road Works and any other road works agreed by the Developer, the Minister and the RMS.

Road Improvement Works Contribution means the carrying out and completion of the Road Improvement Works by the Developer as set out in Schedule 4.

Road Works Agreement means a works authorisation deed or other legally binding agreement between the Developer and the RMS which governs the carrying out and completion of the Road Improvement Works.

Road Works Plan means the plan outlining the Road Improvement Works attached to this deed at Annexure A.

RMS means the Road and Maritime Services or any similar Authority that may be established from time to time.

SEPP means the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

Service Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority;
- (b) for any public utility undertaking within the meaning of the Standard Instrument as at the date of this deed;
- (c) to be association property within the meaning of the *Community Land Development Act 1989* (NSW); or
- (d) for open space, recreation, environmental conservation, drainage or riparian land management,

but does not include a Super Lot.

Services Infrastructure Strategy has the same meaning as in the Initial Planning Agreement.

Servicing Infrastructure Implementation Plan means the report titled "Marsden Park Services Infrastructure Implementation Plan" prepared by Cardno and dated August 2012.

SIC Discharge Amount means each amount to be applied against the Developer's liability to pay a Special Infrastructure Contribution pursuant to clause 4.3 and Schedule 6.

Special Infrastructure Contribution means a contribution payable in connection with development of the Land determined in accordance the Determination or any subsequent or amended determination, or any other kind of payment required in connection with regional or State infrastructure with respect to the development of the Land.

Special Purpose Financial Report means a report prepared by an independent auditor commissioned by the Guarantor in relation to the activities of the St Leonards Unit Trust which must include a statement of financial performance and a statement of financial position for the year ended 30 June 2012.

Stage 3 Road Works means that stage of the Road Improvement Works which comprises:

- (a) the upgrade of Richmond Road and Garfield Road to 2021 layout (at its ultimate location);
- (b) additional access to precinct (Access Road 1) via left in/left out; and
- (c) four lanes on Richmond Road between Access Road 2 and Access Road 1

as generally set out in the Road Works Plan.

Stage 4 Road Works means that stage of the Road Improvement Works which comprises additional access to Marsden Park Precinct allowing all movements via Richmond Road and Garfield Road as generally set out in the Road Works Plan.

Standard Instrument means *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this deed.

Stockland VPA means the voluntary planning agreement under the Act between the parties to this deed and Stockland Development Pty Limited (ACN 000 064 835) and Stockland Corporation Ltd (ACN 000 181 733) in relation to land within the Marsden Park Precinct.

Strata Certificate has the same meaning as in the Strata Schemes Act.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Subdivision Certificate has the same meaning as in the Act.

Subdivision Certificate Application means an application for a Subdivision Certificate.

Super Lot means a lot that forms part of the Land which, following the registration of a Plan of Subdivision, is intended for further subdivision (including strata and community title subdivision):

- (a) for Residential Accommodation, or
- (b) to be used for Commercial Premises,

but does not include a Service Lot.

Sydney Water means Sydney Water Corporation established under the *Sydney Water Act 1994* (NSW).

Sydney Water Developer Works Deed means a legally binding agreement or agreements between the Developer and Sydney Water which govern the:

- (a) funding requirement for; or
- (b) design, construction and vesting and any other ancillary matters,

related to the Sydney Water Infrastructure Works.

Sydney Water Infrastructure Contribution means the funding of or construction of the Sydney Water Infrastructure Works.

Sydney Water Infrastructure Works means both the:

- (a) **Wastewater Works**; being the construction of either works A2 to A5 or B2 to B4 as listed in Table 30, page 97, of the Marsden Park Wastewater Servicing Report by Sinclair Knight Merz dated June 2012 to facilitate the removal and treatment of sewage from the whole of the Marsden Park Precinct; and
- (b) **Water Works**; being construction of Stage A of the Ultimate Strategy of the works listed in Table 11, page 57 of the Marsden Park Water Servicing Report by Sinclair Knight Merz dated May 2012 to facilitate the provision of water to the whole of the Marsden Park Precinct,

in accordance with the Servicing Infrastructure Implementation Plan subject to any modifications agreed with Sydney Water, the Developer and the Minister.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Trigger Event means each event specified in the table in clause 1 of Schedule 7, upon which the Minister is required to return a Bank Guarantee to the Developer.

Urban Lot means a lot that forms part of the Land to be created by the registration of a:

- (a) Plan of Subdivision and is intended to be developed for Residential Accommodation; or
- (b) Strata Plan and has been or is being developed for Residential Accommodation,

but excluding any Service Lots and Super Lots.

1.3 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named

body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

The provisions of this deed will commence from the date that the Draft SEPP commences within the meaning of section 34(5) of the Act.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3 APPLICATION OF SECTION 94, 94A AND 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4 DEVELOPMENT CONTRIBUTION

4.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to the provisions of section 93F of the Act and clause 3 of Schedule 4 to this deed, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

4.3 Special Infrastructure Contribution Discharge

The Minister will, on the terms set out in Schedule 6, agree to partially or fully (as nominated by the Developer) discharge the liability of the Developer or its nominee to make a Special Infrastructure Contribution imposed under any Development Consent(s) from which the Developer or its nominee is entitled to benefit and apply to the Land or any other land within a Growth Centre in consideration of the performance of all or part of the Developer's obligations under this deed.

4.4 Tradable credits and future offsets

- (a) If and when the NSW Government introduces a new scheme which enables the Developer to utilise SIC Discharge Amounts as an offset to obligations of another person or to offset other obligations of the Developer within the Growth Centres to make a Special Infrastructure Contribution or provide any other public benefit permitted under the Act, then promptly after any request from the Developer, the Minister and the Developer will meet to discuss how the Developer might utilise its SIC Discharge Amounts under that scheme and the Minister will take reasonable steps to enable the Developer to do so (to the extent that it is within the Minister's power to take those steps) and within a reasonable time.
- (b) Notwithstanding clause 4.4(a), prior to the commencement of any new legislation, policy or direction regarding the nature, quantum or timing of provision of State or regional infrastructure contributions and funding (**New Infrastructure Legislation**), promptly after any request from the Developer, the Minister and the Developer will meet to discuss how the Developer might utilise its SIC Discharge Amounts under that the New Infrastructure Legislation and the Minister will take reasonable steps to enable the Developer to do so (to the extent that it is within the Minister's power to take those steps) and within a reasonable time.

4.5 Review of deed

- (a) This deed may be reviewed or modified and any review or modification of this deed will be conducted in the circumstances and in the manner determined by the parties.
- (b) The Parties acknowledge that at the date of this deed, the NSW State Government is reviewing the quantum, nature and method of delivery of infrastructure required to facilitate residential development in NSW.
- (c) In the event that:
 - (i) the Determination is amended and the Special Infrastructure Contribution is reduced below the Special Infrastructure Contribution as at the date of this deed; or

- (ii) the:
 - (A) value the Education Land exceeds \$16 million;
 - (B) cost of that part of the Road Improvement Works Contribution that comprise the Stage 3 Road Works exceeds \$32 million;
 - (C) cost of that part of the Road Improvement Works Contribution that comprise the Stage 4 Road Works exceed \$1 million; or
- (iii) the legislation, Determination or policies are amended with respect to infrastructure contributions as they apply to the Growth Centres; or
- (iv) if there is a change to RMS requirements, which will impact upon and require reconsideration of the Road Improvement Works contemplated by this deed; or
- (v) the RMS has failed to acquire any land or obtain any construction or access easements or licences required to enable the Developer to carry out the Road Improvement Works within 18 months of the Developer notifying the RMS in writing that it proposes to commence the relevant portion of the Road Improvement Works,

then the Minister and the Developer agree to meet and review the deed.

- (d) For the purpose of clause 4.5(c)(ii):
 - (i) the value of the Education Land is to be determined by the Minister, acting reasonably, after receiving an independent valuation of the Education Land provided by the Developer at the same time as the Developer issues a notice to the Minister under clause 3.1(b) of Schedule 4;
 - (ii) the value of the Stage 3 Road Works is to be determined by the Minister, acting reasonably, after receiving an independent report prepared by a suitably qualified quantity surveyor as to the cost of the Stage 3 Road Works prior to the Developer issuing a letter of acceptance within the meaning of AS4000-1997 (or a similar form of letter) that authorises the commencement of the Stage 3 Road Works; and
 - (iii) the value of the Stage 4 Road Works is to be determined by the Minister, acting reasonably, after receiving an independent report prepared by a suitably qualified quantity surveyor as to the cost of the Stage 4 Road Works prior to the Developer issuing a letter of acceptance within the meaning of AS4000-1997 (or a similar form

of letter) that authorises the commencement of the Stage 4 Road Works.

- (e) If a review of this deed is carried out under clause 4.5(c)(iv) or 4.5(c)(v) (even if that is not the only reason why the review is carried out):
 - (i) the parties must consider during that review process, the Developer's development program and critical development path; and
 - (ii) the Developer is taken not to be in breach of this deed as a result of not having carried out the relevant Road Improvement Works.

5 INTEREST

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6 ENFORCEMENT

6.1 Developer to provide Guarantee and Indemnity

- (a) The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by procuring from the Guarantor the Guarantee and Indemnity in favour of the Minister.
- (b) At the request of the Developer, the Guarantor agrees to provide the Guarantee and Indemnity.

6.2 Developer to provide Bank Guarantees

- (a) The Developer must procure from the Guarantor a Special Purpose Financial Report and provide it to the Minister as soon as practicable after the date this deed commences.
- (b) If:

- (i) the Developer has not provided a Special Purpose Financial Report to the Minister within 9 months of the commencement of this deed, or
- (ii) the Developer has provided such a report and the Minister has notified the Developer in writing within 45 days of receiving that report that he is not satisfied with the report,

then the Developer agrees to provide, or procure, the Bank Guarantees as set out in Schedule 7.

- (c) The Developer agrees that the provision of the Bank Guarantees is in addition to the security required by clause 6.1.

7 REGISTRATION

7.1 Registration of deed

Within 30 Business Days of the operation of this deed in accordance with clause 2.1, the Developer at its own expense will take all reasonably practicable steps to procure:

- (a) the consent of each person who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or
 - (ii) is seized or possessed of an estate or interest in the Land; and
- (b) the execution of any documents; and
- (c) the production of the relevant certificates of title; and
- (d) as soon as practicable thereafter, the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

7.2 Evidence of registration

The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land (such that the deed is

no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) upon:

- (a) the issuing of a Subdivision Certificate or Strata Certificate (as the case may be) in respect of any lot other than a Super Lot, and the Minister being satisfied, acting reasonably and without delay, that the Developer is otherwise in material compliance with this deed; or
- (b) the occurrence of any of the release and discharge events in clause 14.

7.4 Lots other than Super Lots

- (a) This deed will not remain or be newly registered by the Registrar-General under section 93H in relation to any lot other than a Super Lot, subject to the Minister being satisfied, acting reasonably and without delay, that the Developer is otherwise in material compliance with this deed.
- (b) For each Plan of Subdivision or Strata Plan lodged with the office of the Registrar-General, where that Plan of Subdivision or Strata Plan is intended to create any lot other than a Super Lot, the Minister must do all things reasonably required by the Developer to ensure that this deed is not registered by the Registrar-General under section 93H of the Act in relation to that Lot.
- (c) If through error or other reason this deed is registered on the title to any Urban Lot or Service Lot, each party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this deed to be removed from the title to that lot.

7.5 Interest in Land

- (a) The Developer represents and warrants that it is legally and beneficially entitled to obtain all consents and approvals in relation to the Land.
- (b) The Landowner represents and warrants that it is the owner of the Land.

8 SUBDIVISION CERTIFICATES PRECONDITIONS

The Minister acknowledges that the preconditions to be satisfied under this deed prior to the issue of a Subdivision Certificate under the Act only relate to the Subdivision Certificates referred to in the second column of the table at clause 1, Schedule 4 and they do not relate to any other Subdivision Certificates issued in respect of the Development.

9 DISPUTE RESOLUTION

9.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 9.

9.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

9.3 Attempt to resolve

On receipt of notice under clause 9.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

9.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 9.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

9.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 9.2 then any party which has complied with the provisions of this clause 9 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

9.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 9 is to attempt to settle the dispute. No party may use any information or documents obtained through any

dispute resolution process undertaken under this clause 9 for any purpose other than in an attempt to settle the dispute.

9.7 No prejudice

This clause 9 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

10 GST

10.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

10.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

10.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

10.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 10.

10.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

10.6 Non monetary consideration

Clause 10.5 applies to non-monetary consideration.

10.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 10.5 the Developer will assume the Minister is not entitled to any input tax credit.

10.8 No merger

This clause will not merge on completion or termination of this deed.

11 ASSIGNMENT AND NOVATION

11.1 Consent

- (a) This deed is personal to each party and no party may assign the rights or benefits of this deed to any person except:
 - (i) to a related body corporate, after obtaining the consent of the other parties, which the other parties must not withhold if reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
 - (ii) to any other person, with the prior consent of the other parties, provided that such consent must not be unreasonably withheld.
- (b) This clause 11.1 does not prevent any change in the ownership of the whole or any part of the Land and is subject to section 93H(3) of the Act.
- (c) This clause does not apply to the assignment of any SIC Discharge Amounts to any nominee of the Developer.

11.2 Developer's right to assign or novate

- (a) Prior to seeking the consent of the Minister to a proposed assignment or novation of its rights or obligations under this deed, the Developer must:
 - (i) satisfy the Minister (who must act reasonably and without delay) that the person to whom the Developer's rights or obligations are

to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Developer's obligations under this deed insofar as those obligations have been novated to the Incoming Party; and

- (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably and without delay) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party was the Developer.
- (b) The Developer will pay the Minister's reasonable costs and expenses incurred under this clause 11.2.

11.3 Landowner's right to transfer Land

- (a) The Landowner must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.
- (b) Notwithstanding clause 11.3(a) the Landowner may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Landowner:
 - (i) satisfies the Minister, acting reasonably and without delay, that the proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Landowner under this deed or satisfies the Minister acting reasonably and without delay that the Landowner will continue to be bound by the terms of this deed after the transfer has been effected; and
 - (ii) satisfies the Minister acting reasonably and without delay that it is not in material breach of its obligations under this deed.
- (c) The Developer will pay the Minister's reasonable costs and expenses incurred under this clause 11.3.

11.4 Transfer of land between Stockland and Woorong Park

- (a) The provisions of clauses 11.1 to 11.3 do not apply where Woorong Park transfers any part of the Land it owns to Stockland Development Pty Ltd (ACN 000 064 835).
- (b) The transferee under clause 11.4(a) must notify the Minister in writing within 20 Business Days of the transfer indicating that the transfer has occurred and identifying what Land has been transferred.

11.5 Release

On transfer of any part of the Land in compliance with this clause 11, the parties agree that the Developer, the Landowner and the Guarantor, as the case may be, are released from all undertakings and all obligations arising that remain to be performed in relation to that transferred land.

12 CAPACITY

12.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

12.2 Trustee Developer – Winten (14) Pty Limited

- (a) Winten (14) Pty Limited represents and warrants that:
 - (i) it is the sole trustee of the Winten (14) Trust (ABN 17 092 479 626) and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Winten (14) Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Winten (14) Trust; and
 - (iv) it has the power under the deed constituting the Winten (14) Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting the Winten (14) Trust.
- (b) If the trustee of the Winten (14) Trust is replaced in accordance with the trust deed of the Winten (14) Trust, then:
 - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
 - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this

clause and the costs and expenses of registering any new deed on the title to the Land.

12.3 Trustee Guarantor – Winten Developments Pty Limited

- (a) Winten Developments Pty Limited represents and warrants that:
 - (i) it is the sole trustee of the St Leonards Unit Trust (ABN 62 936 379 867) and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the St Leonards Unit Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the St Leonards Unit Trust; and
 - (iv) it has the power under the deed constituting the St Leonards Unit Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting the St Leonards Unit Trust.
- (b) If the trustee of the St Leonards Unit Trust is replaced in accordance with the trust deed of the St Leonards Unit Trust, then:
 - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
 - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

12.4 Trustee Landowner – Woorong Park Pty Limited

- (a) Woorong Park Pty Limited represents and warrants that:
 - (i) it is the sole trustee of the Woorong Park Trust (ABN 58 006 628 844) and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Woorong Park Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Woorong Park Trust; and

- (iv) it has the power under the deed constituting the Woorong Park Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting the Woorong Park Trust.
- (b) If the trustee of the Woorong Park Trust is replaced in accordance with the trust deed of the Woorong Park Trust, then:
 - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
 - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

12.5 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

13 REPORTING REQUIREMENT

- (a) On each anniversary of the date of this deed or as otherwise agreed with the Director-General until such time as the Developer has provided the Contributions in accordance with this deed, the Developer must deliver to the Director-General a report which must include those matters set out in clauses (b).
- (b) The report must include:
 - (i) details of all Development Consents granted in relation to the Development;
 - (ii) a schedule that details all Contributions provided under this deed as at the date of the report; and
 - (iii) an estimated date for when the Developer expects to lodge the next Planning Application.
- (c) Upon the Director-General's request, the Developer must deliver to the Director-General all documents and other information which, in the

reasonable opinion of the Director-General are necessary for the Director-General to assess the status of the Development.

14 RELEASE AND DISCHARGE

The Developer is released and discharged from its obligations under this deed if:

- (a) Either or both of the Draft SEPP (once it has commenced) or this deed are declared void or invalid by a Court of competent jurisdiction.
- (b) The Developer has fulfilled all of its obligations under the deed to the Minister's reasonable satisfaction.
- (c) The deed is terminated.
- (d) The parties agree that the performance of the deed has been frustrated by an event outside the control of the parties to the deed.
- (e) A decision is made by the NSW Government to not commence the Draft SEPP and which decision is communicated by the Minister to the other parties in writing.

15 GENERAL PROVISIONS

15.1 Entire deed

The Initial Planning Agreement and this deed constitute the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

15.2 Variation

This deed must not be varied except by a later written document executed by all parties.

15.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

15.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

15.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

15.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

15.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

15.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

15.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

15.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

15.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

15.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

15.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

15.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

15.15 Expenses and Taxes

- (a) The Developer must pay its own and the Minister's reasonable legal reasonable costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed except that any stamp duty payable in respect of Land transferred to an Authority will be paid as contemplated by Schedule 4.
- (d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 15.15(a) and (b).

- (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

15.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this deed applies and/or the development to which this deed applies – (section 93F(3)(b))	(a) An amendment to the SEPP in the form of a Draft SEPP to allow the Development as permissible with consent; and (b) The Development.
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 9

REQUIREMENT UNDER THE ACT	THIS DEED
Enforcement of this deed – (section 93F(3)(g))	See clause 6, clause 7, clause 3.2 of Schedule 4, Schedule 5 and Schedule 7.
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 15.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes

SCHEDULE 2**Address for Service (clause 1.2)****Minister**

Contact: The Director-General

Address: Department of Planning and Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

Developer

Contact: David Rothwell

Address: Winten (14) Pty Limited
Level 10, 61 Lavender Street
MILSONS POINT NSW 2061

Facsimile No: (02) 9929 5001

Guarantor

Contact: David Rothwell

Address: Winten Developments Pty Limited
Level 10, 61 Lavender Street
MILSONS POINT NSW 2061

Facsimile No: (02) 9929 5001

Landowner

Contact: David Rothwell

Address: Woorong Park Pty Ltd
Level 10, 61 Lavender Street
MILSONS POINT NSW 2061

Facsimile No: (02) 9929 5001

SCHEDULE 3**Land (clause 1.2)****1 Lots proposed for development**

Lot	Deposited Plan	Folio Identifier	Landowner
4	1078187	4/1078187	Woorong Park Pty Ltd
5	1078187	5/1078187	Woorong Park Pty Ltd
10	1178982	10/1178982	Woorong Park Pty Ltd
7	1078187	7/1078187	Woorong Park Pty Ltd
8	1078187	8/1078187	Woorong Park Pty Ltd
9	1078187	9/1078187	Woorong Park Pty Ltd

SCHEDULE 4

Development Contributions (clause 4)

1 Development Contributions

The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Timing
Road Improvement Works Contribution	Practical Completion of Stage 3 and 4 Road Works – the earlier of the following events or dates: (a) prior to the issue of a Subdivision Certificate or Strata Certificate (as the case may be) for the creation of the 1st Urban Lot; or (b) prior to the issue of a Subdivision Certificate or Strata Certificate (as the case may be) for the creation of the 1,800th Urban Lot under the Stockland VPA; or (c) 30 June 2019, or such other date as agreed between the Minister, the Developer and RMS.
Education Land Contribution	(a) Dedication of the Education Land at no cost to the Minister – prior to the issue of a Subdivision Certificate or Strata Certificate (as the case may be) for the creation of the 601st Urban Lot, subject to the provisions of clause 3 of this Schedule 4. (b) Payment of the Education Cash Contribution – an instalment of \$2,000,000 must be paid prior to the issue of the relevant Subdivision Certificate or Strata Certificate (as the case may be) that will create the following Urban Lots:

	(i) 1,001st (ii) 2,001st (iii) 3,001st.
Sydney Water Infrastructure Contribution	Practical Completion of the Sydney Water Infrastructure Works -: (a) for that part of the Sydney Water Infrastructure Works required to service the relevant portion of Stage 2 as referred to in clause 1.5 of the Servicing Infrastructure Implementation Plan, prior to the issue of the relevant Subdivision Certificate or Strata Certificate (as the case may be) for the creation of the 401st Urban Lot or as otherwise agreed between the Developer and Sydney Water; and (b) for that part of the Sydney Water Infrastructure Works required to service Stages 3-5 as referred to in clause 1.5 of the Servicing Infrastructure Implementation Plan, as agreed between the Developer, the Minister and Sydney Water: (i) but such agreement must be in place before the creation of the 1st Urban Lot, and (ii) provided that the Sydney Water Infrastructure Works are all completed prior to the issue of the relevant Subdivision Certificate or Strata Certificate (as the case may be) for the creation of the 3,201st Urban Lot or as otherwise agreed between the Developer and Sydney Water.

2 Road Improvement Works Contribution

- (a) For each of the Stage 3 Road Works and Stage 4 Road Works, the Developer must:
 - (i) enter into a Road Works Agreement with RMS upon terms and conditions which each of the RMS and the Developer have agreed in respect of the carrying out and completion of the applicable stage of the Road Improvement Works; and
 - (ii) achieve Practical Completion of each applicable stage of the Road Improvement Works within the timing specified in the table in clause 1 of this Schedule 4.
- (b) The Developer must notify the Minister promptly following entry into a Road Works Agreement and provide the Minister with a copy of that agreement.
- (c) For the purposes of clause 26 of the Determination, the Minister acknowledges and agrees that the Roads Works Agreement is a works-in-kind agreement and meets the requirements of clause 26 of the Determination.
- (d) At least 14 days prior to any application for a Subdivision Certificate or Strata Certificate (as the case may be) relating to each stage of the Road Improvement Works as set out in the table to clause 1 of this Schedule, the Developer must provide notice to the Minister in writing that such an application is intended to be made.
- (e) If the Minister becomes aware, or is satisfied (after receiving a written request from the Developer), that the NSW State Government or the Commonwealth Government of Australia have committed to funding or completing any part of the Road Improvement Works, the Minister is to send a notice (**Release Notice**) to the Developer within 30 Business Days of the earlier of either becoming aware of that fact, or of receiving the Developer's request identifying the relevant aspect of the Road Improvement Works that will be funded or completed. On and from the date of the Release Notice, the Developer is released from its obligations to complete the relevant aspect of the Road Improvement Works identified in the Release Notice as a Contribution under this deed.

3 Education Land Contribution

3.1 Transfer of Education Land

- (a) The Developer must (at its cost) prepare and register a Plan of Subdivision to create a separate lot or lots for the Education Land.
- (b) For the purpose of this clause, at least 6 months before the Developer applies for a Subdivision Certificate or a Strata Certificate (as the case may be) that will create the 40^{1st} Urban Lot, the Developer must notify the Minister of its intention to lodge an application for that Subdivision Certificate or Strata Certificate.
- (c) Within 3 months of receiving notice from the Developer under clause 3.1(b) of this Schedule 4, the Minister must provide the Developer with a written notice stating either that the Minister:

- (i) requires the Education Land to be used for the purposes of constructing and operating a school on the parcel of land comprising the Education Land before the creation of the 601st Urban Lot; or
 - (ii) requires the Education Land to be used for the purposes of constructing and operating a school on the parcel of land comprising the Education Land before the creation of the 801st Urban Lot; or
 - (iii) does not require the Education Land.
- (d) If the Minister does not provide the Developer with a notice referred to clause 3.1(c) or notifies the Developer that the Minister does not require the Education Land:
 - (i) the Developer is not required to procure the transfer of the Education Land to the Minister;
 - (ii) the provisions of this clause 3 will otherwise not apply; and
 - (iii) the Developer is discharged in full from any of its obligations in relation to the Education Land under this deed.
- (e) Following receipt of a notice from the Minister stating that the Minister will require the Education Land pursuant to clause 3.1(c)(i) or clause 3.1(c)(ii) and before a Subdivision Certificate or Strata Certificate (as the case may be) is issued for the creation of the 601st Urban Lot or the 801st Urban Lot (as the case may be), the Developer agrees to:
 - (i) procure the transfer of the Education Land to the Minister (or, if directed, to the Minister's nominee) for \$1; and
 - (ii) deliver to the Minister (or, if the Minister directs, to the Minister's nominee):
 - (A) a form of transfer in respect of the land comprising the Education Land executed by the Landowner and in registrable form; and
 - (B) the certificates of title for the Education Land,

and must take any other necessary action (other than paying stamp duty associated with the transfer or contract for sale) to give effect to the transfer of the title of the Education Land to the Minister (or, where appropriate, the Minister's nominee) free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).
- (f) Upon transfer, the Education Land will be free from any encumbrances other than service easements or other encumbrances as agreed with the Minister.
- (g) The Developer indemnifies and agrees to keep indemnified the Minister (or his nominee) against all claims made against the Minister (or his nominee) as a result of any contamination that is required to be cleaned up by an Authority over the whole or any part of the Education Land but only in

relation to contamination that existed on or before the date that the Education Land is transferred to the Minister (or his nominee).

- (h) The Developer must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Education Land.
- (i) The Developer will pay all rates and taxes owing in respect of the Education Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Education Land pursuant to clause 3.1(e) of this Schedule, after which time the Minister will be responsible for all rates and taxes in relation to the Education Land.

3.2 Compulsory acquisition

- (a) If the Developer does not procure the transfer of the Education Land in accordance with clause 3.1 of this Schedule 4, the Landowner consents to the Minister (or his nominee) compulsorily acquiring the Education Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- (b) The Landowner and the Minister agree that:
 - (i) clause 3.2(a) of this Schedule 4 is an agreement between the Landowner and the Minister for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in clause 3.2(a) of this Schedule 4, the Landowner and the Minister have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) If the Minister must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* to any person, other than the Landowner, in accordance with the compulsory acquisition arrangements under clause 3.2 of this Schedule 4, the Land Owner must reimburse the amount of that compensation to the Minister on request.
- (d) The Developer indemnifies and agrees to keep indemnified the Minister (or his nominee) against all claims made against the Minister (or his nominee) as a result of any contamination that is required to be cleaned up by an Authority over the whole or any part of the Education Land but only in relation to contamination that existed on or before the date that the Education Land is acquired by the Minister (or his nominee).

3.3 Payment of Education Cash Contribution

- (a) The Developer must pay to the Minister the Education Cash Contribution in accordance with this clause 3.3.
- (b) Each instalment must be paid as set out in the table in clause 1 of this Schedule 4.
- (c) On each CPI Adjustment Date, the value of the instalment will be adjusted by multiplying it by an amount equal to the Current CPI divided by the Base CPI.

4 Sydney Water Infrastructure Contribution

- (a) The Developer must:
 - (i) enter into a Sydney Water Developer Works Deed with Sydney Water prior to the issue of any Construction Certificate for subdivision works on the Land upon terms and conditions which each of Sydney Water and the Developer have agreed in respect of the carrying out and completion of the Sydney Water Infrastructure Works; and
 - (ii) achieve Practical Completion of the Wastewater Works and Water Works in accordance with the times specified in the table to clause 1 of this Schedule 4.
- (b) The Developer must notify the Minister promptly following entry into a Sydney Water Developer Works Deed and provide the Minister with a copy of any such agreement.
- (c) The Developer must comply with the terms and conditions of the Sydney Water Works Deed, including any requirement to provide security and achieve Practical Completion of the Sydney Water Infrastructure Works.

SCHEDULE 5

Guarantee and Indemnity (clause 6.1)

1 **Guarantee and Indemnity**

- (a) The Guarantor unconditionally and irrevocably guarantees to the Minister the due performance, observance and fulfilment by the Developer of all the obligations to be performed, observed and fulfilled in this deed.
- (b) The Guarantor unconditionally and irrevocably indemnifies the Minister and agrees at all times to keep the Minister indemnified from and against all liability, damages, costs, losses and expenses (**Loss**) which the Minister may suffer or incur directly or indirectly in rectifying any default by the Developer under this deed excluding any Loss caused by or contributed to by the Minister or any consequential losses.

2 **Principal Obligation**

The Guarantee and Indemnity provided constitutes a principal obligation and a continuing security and shall not be considered as wholly or partially satisfied or discharged by the payment at any time or times hereafter of any sum or sums of money for the time being due to the Minister under this deed or by any settlement of account or any other matter or thing whatsoever but shall extend to cover and be security for all sums of money at any time due to the Minister notwithstanding any special payment, settlement of account or other matter or thing whatsoever.

3 **Enforcement**

- (a) This Guarantee and Indemnity provided under this Schedule 5 may be enforced by the Minister against the Guarantor without first taking action or proceedings against the Developer.
- (b) The liability of the Guarantor under this Schedule 5 shall not be affected by the granting of time or other indulgence or concession to the Developer or by the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Minister against the Developer or by any neglect or omission to enforce such rights or by the liquidation of the Developer or by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from its obligations under this Schedule 5 or any part thereof other than a release or discharge granted by the Minister under clause 2(e) or clause 3.1(d) of Schedule 4.

4 **Guarantor Warranty**

The Guarantor represents and warrants that:

- (a) it has the necessary authorisations to provide the Guarantee and Indemnity, observe its obligations under the Guarantee and Indemnity and allow the Guarantee and Indemnity to be enforced; and
- (b) entry into this deed and the provision of the Guarantee and Indemnity does not contravene its constitution, any law or any other obligation by which it or any of its directors or officers are bound, limit its powers or exceed the powers of its directors or officers.

5 Survival of Guarantee and Indemnity

The Guarantee and Indemnity shall continue and shall remain in full force until the earliest of:

- (a) the Developer having fully performed its obligations to the satisfaction of the Minister under this deed; or
- (b) the Developer assigning or novating its obligations in accordance with clause 11; or
- (c) this deed coming to an end under clause 14.

SCHEDULE 6

SIC Discharge Amounts (clause 4.3)

1 Road Improvement SIC Discharge Amounts

1.1 Road Improvement SIC Discharge

- (a) The Minister agrees to accept the performance of the Road Improvement Works in full or partial discharge (as nominated by the Developer) of the Developer's (or nominee's) liability to make a Special Infrastructure Contribution imposed under any Development Consent(s) from which the Developer (or nominee) is entitled to benefit in relation to the Land or other land in a Growth Centre.
- (b) If the Developer seeks a full discharge under this clause, the Minister must be satisfied that there is sufficient credit to give that full discharge as calculated in accordance with this clause 1.
- (c) In respect of the Road Improvement Works, the SIC Discharge Amount represents the value allocated to the Road Improvement Works and will be calculated by reference to the Actual Cost of the Road Improvement Works.

1.2 Works Milestones

Works Milestone	Description
First Milestone	Practical Completion of Stage 3 Road Works
Second Milestone	Practical Completion of Stage 4 Road Works

1.3 Attainment of Works Milestones relating to the Road Work

- (a) If the Developer considers that it has achieved a Works Milestone, the Developer will forward the following to the Minister:
 - (i) a written notice from the Developer to the Minister notifying the Minister that the Developer has achieved the Works Milestone specified in the notice (**Milestone Notice**);
 - (ii) a certificate signed by the superintendent for the Road Improvement Works confirming that the Developer has paid the amount specified in that certificate to the third party contractor for work performed under the Construction Contract in respect of the Road Improvement Works (or in the case of the final Milestone Notice, a certificate from the RMS confirming that the Road Improvement Works have achieved Practical Completion); and
 - (iii) such other supporting documentation as is necessary for the Minister to determine whether that Works Milestone has been achieved.

- (b) The Developer must promptly provide any additional information requested by the Minister.
- (c) The Minister will, within 20 Business Days of receiving the Milestone Notice and all the certificates and information required under clause 3.3(a), determine whether the Works Milestone specified in the Milestone Notice has been achieved.
- (d) If the Minister, acting reasonably, is satisfied that the Works Milestone has been achieved, the Minister will:
 - (i) accept that portion of the Road Improvement Work undertaken that is directly referable to the Milestone in lieu of the Developer paying a Special Infrastructure Contribution up to the SIC Discharge Amount for that Works Milestone; and
 - (ii) in respect of each Works Milestone achieved, promptly issue a certificate to the Developer (or nominee) which will set out the SIC Discharge Amount that has been credited for that Works Milestone.
- (e) If the Minister, acting reasonably, is not satisfied that the Works Milestone has been achieved, the Minister will notify the Developer and provide an explanation as to why he or she considered that the Works Milestone had not been achieved and, if applicable, provide details of:
 - (i) any additional work or tasks which must be undertaken; and/or
 - (ii) any information or documents which must be provided,
 by the Developer, in order to achieve the Works Milestone. The Developer may, after taking into account the Minister's explanation and undertaking the work or providing the information or documents required, re-submit a Milestone Notice together with any necessary documentation.

2 Education Land Contribution SIC Discharge Amount

2.1 Education Land Contribution SIC Discharge

- (a) The Minister agrees to accept the Education Land Contribution in full or partial discharge (as nominated by the Developer) of the Developer's (or nominee's) liability to make a Special Infrastructure Contribution imposed under any Development Consent(s) from which the Developer (or nominee) is entitled to benefit in relation to the Land or other land in a Growth Centre.
- (b) If the Developer seeks a full discharge under this clause, the Minister must be satisfied that there is sufficient credit to give that full discharge as calculated in accordance with this clause 2.

2.2 Education Land

In respect of the Education Land, the SIC Discharge Amount will equal the market value of the Education Land calculated in accordance with clause 2.3 of this schedule.

2.3 Valuation of Education Land

- (a) Prior to the date of the dedication of the Education Land, the Minister and the Developer must each appoint a valuer who:
 - (i) is a registered valuer under the *Valuers Act 2003 (NSW)* and is not restricted under that Act from valuing the Education Land;
 - (ii) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
 - (iii) is then practising as a valuer;
 - (iv) is independent and not related to any party to this deed;
 - (v) has at least 5 years experience in valuations; and
 - (vi) has a practical understanding of the development and planning process to prepare a valuation for the Education Land,
 (the **Valuer**).
- (b) Each Valuer must prepare a valuation in accordance with this clause 2.3.
- (c) Any valuation provided by each Valuer must comply with the following:
 - (i) The valuation report prepared by the Valuer must confirm that the Valuer satisfies each of the requirements set out in clause 2.3(a).
 - (ii) The Valuer is required to determine the market value of the Education Land, each a freehold lot with vacant possession as at the date of inspection.
 - (iii) The Valuer must, in determining the market value of the Education Land in clause 2.3(c)(ii), assume that each parcel of the subject land:
 - (A) is free of all encumbrances;
 - (B) is or can be fully serviced to its boundary;
 - (C) is an individual lot suitable in size, but no larger than the size necessary, for the permissible uses as contemplated by the Approvals applying to it;
 - (D) has appropriate public road frontage and access; and
 - (E) is capable of being developed for its intended use as contemplated under the Approvals applying to it without reliance on the implementation of any additional public infrastructure external to the site.
 - (iv) The Valuer must, in determining the market value of the Education Land, comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where

such standards and guidelines conflict with this clause 2.3 in which case this clause 2.3 prevails.

- (v) The market value of the Education Land must have regard to the highest and best use of each site consistent with its permissible use;
- (vi) The Valuer must provide a comprehensive valuation report which shall include the following matters:
 - (A) confirmation of instructions;
 - (B) identification of the subject land being valued;
 - (C) date of inspection and valuation;
 - (D) registered proprietor;
 - (E) legal description of the subject land including the certificate of title folio identifier and reference to any easements, rights of way, covenants, caveats and/or other encumbrances on title, and comment on the effect, if any, of such encumbrances;
 - (F) services and amenities;
 - (G) site identification;
 - (H) location description, including any external factors that influence the desirability of the Education Land, either positively or negatively for the permitted use;
 - (I) zoning and town planning considerations;
 - (J) a detailed explanation of the valuation methodologies adopted including all calculations and workings;
 - (K) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation and the relativity of comparable sales must be fully explained; and
 - (L) the valuation amount.
- (d) In the event that no less than two of the comparable sales analysed cannot reasonably be considered as being directly comparable (in terms of, but not restricted to, date of sale, size, development capability, zoning and physical and ecological constraints etc) then each Valuer must undertake a feasibility or residual land value approach to the valuation.
- (e) In the event that the valuations vary by less than 10%, the average of the valuation amounts shall be adopted as the value for the subject land.
- (f) In the event that the valuations vary by more than 10%, then the Valuers shall meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation drivers, methodologies or inputs). Following this meeting, the Valuers shall review their valuations. If the

valuations continue to vary by more than 10%, the valuation to apply to the subject land will be determined by a further Valuer appointed by the President of the Australian Property Institute (NSW Division). That further Valuer shall act as an expert and not as an arbitrator whose decision is final and binding, in the absence of manifest error. The Developer and the Minister must pay the costs associated with any valuer appointed for this purpose in equal proportions.

2.4 Education Land Contribution SIC Discharge Amount

Upon the transfer of the Education Land to the Minister in accordance with clause 3 of Schedule 4 the Minister must, within 5 Business Days, issue a certificate to the Developer stating the SIC Discharge Amount that has been credited to the Education Land Contribution, being the value of the Education Land calculated in accordance with clause 2.3 of this Schedule.

2.5 Education Cash Contribution

In respect of the Education Cash Contribution, the SIC Discharge Amount represents the value of the aggregate of any amounts paid under this deed towards the Education Cash Contributions increased to reflect any increase in the CPI since the date of this deed.

3 Residual SIC Discharge Amounts

To the extent that a SIC Discharge Amount for the Road Improvement Works or the Education Land Contribution exceeds any Special Infrastructure Contribution otherwise payable by the Developer (or its nominee) at the time that the credit is created, the Minister will issue a certificate to the Developer setting out that residual SIC Discharge Amount which may be held for the Developer for future use.